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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,616	10/04/2000	Max Harry Weil	20/168	6966

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/678,616

Applicant(s)

WEIL ET AL.

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 10 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 10 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is responsive to the amendment filed on 6/19/02. As directed by the amendment, claims 8 and 13 were amended, claim 6 was canceled, and claim 15 was added. Thus, claims 8, 10, and 13-15 are presently pending in this application.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "182" has been used to designate both "location" and "rivet", see figure 2. Correction is required.

3. The drawings are objected to because there are two figures being designated as "figure 1". In figure 3, the numeral "16" being pointed to the belt; the relationship between element "264" and the compression device is not shown, similar to the element "260" in figure 3. In addition, it is not clear from which plane in figure 1 that the cross-sectional view of figure 2 is taken. Notes that the plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sights. See MPEP 608.02 (h)(3). Correction is required.

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4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "saucer-shaped element" in claim 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 13 and 14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original filed specification fails to provide an enabling disclosure of the stabilizer leg portion outer ends being spaced further from the axis than the pressing member in **every horizontal direction** to limit tilt of the compressor assembly in **every tilt direction**. It appears that the recitation contradicts the disclosure in the original filed disclosure. For example, in figure 1, with only two leg portions 152, 154, the compressor assembly could tilt to the left or the right hand sides of the user. It is not clear how the leg portion outer ends being spaced further from the axis than the pressing member in the left and right hand sides of the patient (horizontal directions). Furthermore, it is not clear what is the structural relationship between the stabilizer 150 and the legs 152, 154, and how to attach the legs to the stabilizer 150.

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7. Claims 8, 10, and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, line 16 "ends" is not clear as to whether or not new ends are being referred.

In claim 13, line 14 "the presser" lacks antecedent basis.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Waide et al (5,399,148).

Waide teaches a cardiac massage device having an energizable compressor assembly 1 (figure 2) including a pressing member 2, a torso wrap 5, a stabilizer (3, 4) having a plurality of leg portions 3. Figure 1 of Waide shows that the pressing member has a vertical axis extending from the center of the pressing member, and the stabilizer leg portion 3 has outer ends spaced further from the axis than the pressing member in every horizontal direction.

Regarding claim 14, figure 1 of Waide shows the outer end portions of the leg portions has at substantially the same height above a horizontal patient's chest as the pressing member.

Claim Rejections - 35 USC § 103

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10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waide et al (5,399,148).

Regarding claim 8, Waide differs from the present invention in that Waide has leg portions being placed to support the pressing member on its left and right hand sides rather than placing the leg portions that lies respectively closer to the head and legs of the patient than the pressing member. However, the feature of shifting the positions of the leg portions is considered as an obvious design choice since placing the leg portions to the recited locations would not have modified the operation of the device. In addition, the feature of having a narrower leg portion when compared to the pressing member such that the ends lie closer to the opposite sides of the patient than the pressing member is considered as an obvious design choice, if one of ordinary skill in the art desired to choose a smaller engaging surface with the patient's chest, one would have looked to Waide's device and seen that by reducing the width of the leg portions would be able to provide a smaller engaging surface.

Regarding claim 10, Waide's stabilizer has a plate shaped element 4 but lacks a saucer-shaped element. However, the feature of fabricate a saucer-shaped element which extending more than 180 degrees rather than a plate shaped element is considered as an obvious design choice, since the shape of the element is not a criticality in Waide's invention and it appears that Waide's stabilizer would perform equally well with a saucer-shaped element.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woudenberg et al (4,664,098) in view of Kuroiwa (JP 411,301,484 A).

Woudenberg discloses a cardiopulmonary resuscitator having an energizable compressor assembly which including an actuator (12, 25) and a fluid source 15, and a torso wrap 17.

Figure 1 of Woudenberg shows the actuator having a pressing means 12 including a contact surface 13 (lowermost piston part) and a flexible wall section 60, the lowermost piston part 13 having at least half the diameter of the inside surface of the pressing means 12, and the contact surface (lowermost piston part) is movable in a reciprocal motion via the flexible wall and the pressure therewith. Woudeberg's actuator lacks a cylinder having a piston with a plurality of telescoping piston parts. However, Kuroiwa teaches a pneumatic cylinder having a telescopic piston 1 which including a plurality of piston parts (figure 2) that are exposed to pressure fluid to move the outermost piston part 3 (figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Woudenberg's actuator with a telescopic piston as taught by Kuroiwa, in order to be able to selectively control the extended length of the piston.

Response to Arguments

13. Applicant's arguments filed 6/19/02 have been fully considered but they are not persuasive.

Applicant on page 5, lines 7-8 of the remarks states that Waide's block 2 is just as far from the opposite sides of the patient as his legs 3. While it is true that Waide's legs has the

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same width as the pressing member 2, however, since the applicant fails to disclose the narrower legs providing any additional benefits, it is the examiner's position that reducing the width of Waide's legs is a design consideration upon various patients' conditions.

On page 5, lines 8-10 of the remarks, the applicant argues that Waide does not use a wide support that stabilizes has actuator against tipping at any direction as is described in claim 8. The argument is irrelevant since the language is not supported by the claim 8.

On page 5, lines 14-15, the applicant states that by extending the saucer-shaped element more than 180°, the applicant prevents the actuator **from tilting in any direction**. The statement is misdescribed. Notes the few degrees of tilt on page 7, lines 19-20 of the originally filed specification. Indeed, Waide's rectangular plate 4 extends around the vertical axis of the actuator. The feature of changing the rectangular shaped plate 4 into a saucer shaped plate which extending more than 180° around the vertical axis of the actuator is a design choice. See In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

14. Applicant's arguments with respect to claims 8, 10, and 13-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lally (4,554,910), Hewson (3,511,275), and Arpin (4,702,231) are cited to show different pulmonary resuscitation devices.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703)308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

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Justine R Yu
Primary Examiner
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JY
August 29, 2002